

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DARRIN LELAND REBER,

Petitioner,

vs.

PETER BLUDWORTH and
AUSTIN KNUDSEN, Attorney
General of the State of Montana,

Respondents.

CV 20–101–M–DLC

ORDER

Before the Court is the Findings and Recommendation of United States Magistrate Judge Kathleen L. DeSoto. (Doc. 9.) Judge DeSoto recommends the Court dismiss with prejudice Petitioner Darrin Leland Reber’s 28 U.S.C. § 2254 Petition as procedurally defaulted without excuse. Judge DeSoto further recommends that the Court deny a certificate of appealability (“COA”). (*Id.* at 7–8.) Reber timely objects. (Doc. 10.)

Reber is entitled to de novo review of those findings to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). Absent objection, the Court reviews for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error review is “significantly deferential” and exists if the Court is left with a “definite and firm

conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Here, the Court applies clear error review, as Reber raises no specific objection to Judge DeSoto’s finding procedural default without excuse. Instead, he simply attaches what appears to be a largely transcribed version of his Petition to his Objection and styles it as “Affidavit in Support of a Fundamental Miscarriage of Justice.” (*Compare* Doc. 1 at 9–39 *with* Doc. 10 at 9–39.) However styled, Reber does not challenge Judge DeSoto’s analysis as it relates to whether cause or a fundamental miscarriage of justice excuse his procedurally defaulted Petition. And, reviewing the same for clear error, the Court finds none. Moreover, the Court agrees with Judge DeSoto’s determination that a COA should be denied.

Accordingly, IT IS ORDERED that the Court ADOPTS Judge DeSoto’s Findings and Recommendation (Doc. 9) IN FULL, and Reber’s Petition (Doc. 1) is DISMISSED with prejudice as procedurally defaulted without excuse.

IT IS FURTHER ORDERED that a COA is DENIED.

Finally, IT IS ORDERED that the Clerk of Court shall enter by separate document judgment of dismissal in favor of Respondents and against Reber.

DATED this 9th day of August, 2021.



Dana L. Christensen, District Judge
United States District Court